30 pv

MONTANA LEGISLATIVE HISTORY

Chapter 523 1981

Bill H _____ S 162 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Mar 06	✓ C	Hearing Date(s)	Jan 26	✓ C
	Mar 10	✓ C		Jan 30	✓ C
	Mar 12	✓ C			C
		C			C
Date Out	Mar 12	✓ C		Jan 30	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SENATE BILL NO. 162

INTRODUCED BY MAZUREK

IN THE SENATE

January 16, 1981	Introduced and referred to Committee on Judiciary.
January 30, 1981	Committee recommend bill do pass as amended. Report adopted.
January 31, 1981	Bill printed and placed on members' desks.
February 2, 1981	Second reading, do pass as amended.
February 3, 1981	Correctly engrossed.
February 4, 1981	Third reading, passed. Transmitted to House.

IN THE HOUSE

February 5, 1981	Introduced and referred to Committee on Judiciary.
March 11, 1981	Committee recommend bill be not concurred in. Report adopted.
	Objection to adverse committee report. On motion taken from second reading and referred back to Committee on Judiciary. Motion adopted.
March 18, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 26, 1981	Second reading, concurred in.
March 28, 1981	Third reading, concurred in as amended. Ayes, 79; Noes, 14.

IN THE SENATE

March 30, 1981	Returned from House with amendments.
April 2, 1981	Second reading, amendments concurred in.
April 4, 1981	Third reading, amendments concurred in. Ayes, 46; Noes, 1. Sent to enrolling.
April 9, 1981	Correctly enrolled.
	Signed by President.
April 10, 1981	Delivered to Governor.
April 16, 1981	Returned from Governor with recommended amendments.
April 17, 1981	Second reading, Governor's amendments concurred in.
	On motion rules suspended. Bill placed on calendar for third reading this day.
	Third reading, Governor's amendments concurred in. Ayes, 45; Noes, 4. Transmitted to House.

IN THE HOUSE

April 20, 1981	Bill received by House.
April 22, 1981	Second reading, Governor's amendments concurred in.
	On motion rules suspended and bill placed on third reading this day.
	Third reading, Governor's amendments concurred in. Ayes, 88; Noes, 7.

Senate BILL NO. 162

INTRODUCED BY Mazurek

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR CONTRIBUTION FROM JOINT TORTFEASORS; AMENDING SECTION 27-1-703, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-703, MCA, is amended to read:

"27-1-703. Multiple defendants jointly and severally liable -- right of contribution. (1) Whenever the ~~comparative~~ negligence of ~~the--parties~~ any party in any action is an issue ~~and-recovery-is-allowed-against-more-than one-party,~~ each ~~such~~ party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other ~~party-against-whom-recovery-is allowed~~ person whose negligence is claimed to have contributed as a proximate cause to the injury complained of.

(2) On motion of any party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence is claimed to have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. Contribution shall be proportional to the negligence of the parties against whom recovery is allowed.

~~(2)~~(3) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties against whom recovery is allowed is liable to contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party."

-End-

INTRODUCED BILL
SB 162

FORTY-SEVENTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB 83	1/08/81	1/14/81	1/19/81			1/19/81			
SB 89	1/09/81	1/14/81	1/20/81	1/20/81					
SB 94	1/10/81	1/15/81	1/15/81	1/15/81					
SB 111	1/13/81	1/19/81	1/20/81			1/20/81			
SB 112	1/13/81	1/19/81	2/14/81			2/14/81			
SB 117	1/14/81	1/20/81	1/23/81			1/23/81			
SB 119	1/14/81	1/22/81	1/23/81	1/23/81					
SB 120	1/14/81	1/22/81	2/07/81			2/07/81			
SB 144	1/15/81	1/29/81	1/30/81			1/30/81			
SB 145	1/15/81	1/23/81	1/23/81	1/23/81					
SB 149	1/16/81	1/23/81	1/30/81			1/30/81			
SB 159	1/16/81	transferred to Fish & Game							
SB 161	1/16/81	1/26/81	2/04/81			2/04/81			
SB 162	1/16/81	1/26/81	1/30/81			1/30/81			
SB 164	1/17/81	2/02/81	2/07/81			2/07/81			
SB 174	1/17/81	2/02/81	2/04/81	2/04/81					

Use a separate sheet for Senat

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 26, 1981 Page 1.

The thirteenth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 161:

AN ACT TO ADOPT THE REVISED UNIFORM LIMITED PARTNERSHIP ACT; REPEALING SECTIONS 35-12-101 THROUGH 35-12-403, MCA.

Senator Mazurek, District 16, Helena, presented the bill as its sponsor, on behalf of the Business Section of the State Bar of Montana. He pointed out that a similar bill was introduced during the 1979 session, and was defeated. This present bill is intended to revise and bring up to date the existing limited partnership laws. Senator Mazurek then made reference to a letter from James M. Haughey, Billings attorney (marked Exhibit A and attached to these minutes). He also explained limited partnership corporations according to Exhibit B, attached to these minutes.

Ward Shanahan, Chairman of the Bar Association's Business Section, then testified on behalf of this bill. He pointed out that one of the main reasons for amending the present law is the ponderous filing procedure that now is required.

Bob Murdo, Secretary of the Business Section of the State Bar Association, in testifying for this bill, referred the committee to a copy of the law (marked Exhibit C and attached to these minutes) and a copy of an article taken from "The Business Lawyer", November, 1978 (marked Exhibit D and attached to these minutes).

Roger Tippy, of the Business Law Section of the State Bar Association, described his efforts in composing this bill and assessing its effectiveness. He stated that the State Auditor's Office supports the bill as written.

Ted Doney, attorney from Helena, representing Petro-Lewis Corp., stated that his client feels that this updating of the existing law is very necessary because of the current

law is unclear on the procedure to be used in registering foreign limited partnerships.

Don Allen, Executive Director of the Montana Petroleum Association, also spoke in favor of the bill, as did J. C. Weingartner, representing the State Bar Association of Montana.

Senator Crippen then cautioned that the repealer clauses and the effective date clauses would have to be handled very carefully; and pointed out that there might be some potential tax benefits to the state from income derived from the partnership.

CONSIDERATION OF SENATE BILL 162:

AN ACT TO PROVIDE FOR CONTRIBUTION FROM JOINT TORTFEASORS; AMENDING SECTION 27-1-703, MCA.

Senator Mazurek presented the bill, stating that the present statute is unfair because it tends to single out a defendant who is most apt to be able to pay damages, rather than distributing blame among all parties who might be responsible. At the end of his presentation he submitted proposed amendments (marked Exhibit E and attached to these minutes).

Glen Drake, attorney from Helena, representing the American Insurance Association, spoke in support of the bill, describing it as a necessary aid to justice in negligence actions.

Mike Meloy, representing the Montana Trial Lawyers Association, then spoke in opposition to the bill. He felt that the amendment submitted by Senator Mazurek does all the correcting of present law that is required; and that the bill itself permits the defendant to join anyone else as a party who the defendant feels is a contributor to the damage. He said that the present law puts more pressure on the plaintiff to pick the correct defendant -- that is, the one who has actually caused the damage.

In closing, Senator Mazurek stated that the plaintiff should not be placed in the position of picking the defendants -- it should be the responsibility of the court.

FURTHER CONSIDERATION OF SENATE BILL 112:

Senator O'Hara moved that the bill pass.

Senator Crippen felt that in line 17 of the bill the term "administrative remedies" is confusing. The feeling of Senators Mazurek, S. Brown, and Crippen was that the bill

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date 1/26/81

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

NAME: Ellen Drake DATE: 1/26

ADDRESS: Helena

PHONE: 442-0230

REPRESENTING WHOM? American Indian Coalition

APPEARING ON WHICH PROPOSAL: 162

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Mike Meany DATE: 1/26/81

ADDRESS: Security Bldg Helena

PHONE: 442 9430

REPRESENTING WHOM? MTA

APPEARING ON WHICH PROPOSAL: SB 162

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? V

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

10

Exhibit E

PROPOSED AMENDMENTS TO SENATE BILL 162

1. Page 1, line 18.
Strike: "is claimed to"
Insert: "may"

2. Page 1, line 23.
Strike: "is"

3. Page 1, line 24.
Strike: "claimed to"
Insert: "may"

4. Page 2, line 1.
Following: "action."
Insert: "Whenever more than one person is found to have contributed as a proximate cause to the injury complained of, the trier of fact shall proportion the degree of fault among such persons."

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 30, 1981

The sixteenth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

DISPOSITION OF SENATE BILL 149:

Reports from the committee members revealed little or no concern on the part of local bankers relative to the passage of this bill. Senator Tveit moved that the bill not pass. His motion failed. Senator Berg moved that the bill be amended on page 1, line 11, by inserting "purposely or" after "who". The motion for the amendment carried. Senator O'Hara moved that the bill DO PASS AS AMENDED, and his motion carried with Senator Tveit's vote being the only opposing one.

DISPOSITION OF SENATE BILL 203:

Senator S. Brown moved that the bill DO NOT PASS, and the motion carried unanimously.

DISPOSITION OF SENATE BILL 201:

Senator Berg moved that the bill DO NOT PASS. Following discussion of the merits of the bill, his motion carried.

FURTHER CONSIDERATION OF SENATE BILL 161:

Ted Doney, representing Petro-Lewis Corp., spoke to the committee about a proposed amendment to Section 63 (marked Exhibit A and attached to these minutes), a savings clause specifically designed to protect existing limited partnerships. Senator Mazurek moved that the amendment pass. His motion carried unanimously. Senators Halligan and Mazurek agreed to work with the Secretary of State's office relative to the fee schedule for filings (marked Exhibit B and attached to these minutes). A letter and memorandum from the Secretary of State (marked Exhibits C and D and attached to these minutes) were presented.

DISPOSITION OF SENATE BILL 144:

Senator S. Brown moved that on page 1, line 12, "purposely

and" be inserted following "he"; and that additional changes be made on page 1, line 15; page 2, line 3; and page 2, line 7. Senator Mazurek moved that these amendments pass, and Senator Crippen's vote was the only dissenting one. Senator Olson moved that the bill DO PASS AS AMENDED, and Senator Crippen's vote was the only one in opposition.

CONSIDERATION OF SENATE BILL 286:

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE PRISONER FURLOUGH PROGRAM.

Senator Van Valkenburg presented the bill at the request of the Department of Institutions, which is presenting the bill in order to seriously restrict the prisoner furlough program.

Curt Chisholm, Deputy Director of the Department of Institutions, spoke in favor of the bill.

Nick Rotering, legal counsel for the Department of Institutions, said that the present prisoner furlough law is unworkable, and has prompted many lawsuits. He introduced a statement of intent meant to accompany the bill (marked Exhibit E and attached to these minutes). He stated that this bill has the support of the Parole Board.

Karen Mikota stated that the League of Women Voters supports the bill, and said that they hoped that the furlough process would be streamlined through its passage.

Senator S. Brown questioned many of the bill's repealers.

DISPOSITION OF SENATE BILL 162:

Senator Mazurek moved four amendments to the bill (illustrated on attached committee report) which were designed to clarify which person contribution may be obtained from and to clarify the fact that the court may apportion the negligence among the parties. The amendments carried unanimously. Senator O'Hara moved that the bill DO PASS AS AMENDED, and his motion carried unanimously.

A motion for adjournment then carried unanimously.

Mike Anderson

Senator Anderson
Chairman, Judiciary Committee

Exhibit E

PROPOSED AMENDMENTS TO SENATE BILL 162

1. Page 1, line 18.
Strike: "is claimed to"
Insert: "may"

2. Page 1, line 23.
Strike: "is"

3. Page 1, line 24.
Strike: "claimed to"
Insert: "may"

4. Page 2, line 1.
Following: "action."
Insert: "Whenever more than one person is found to have contributed as a proximate cause to the injury complained of, the trier of fact shall proportion the degree of fault among such persons."

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date 1/30/81

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

January 30, 19 81

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 162

Respectfully report as follows: That SENATE Bill No. 162

be amended as follows:

1. Page 1, line 18.
Strike: "is claimed to"
Insert: "may"

2. Page 1, line 23.
Strike: "is"

3. Page 1, lines 23 and 24.
Strike: "is claimed to"
Insert: "may"

4. Page 2, line 1.
Following: "action."
Insert: "Whenever more than one person is found to have contributed as a proximate cause to the injury complained of, the trier of fact shall proportion the degree of fault among such persons."

And, as so amended,
DO PASS

Mike Anderson
Chairman.

STATE PUB. CO.
Helena, Mont.

JUDICIARY COMMITTEE

47th Legislature

SENATE BILLS

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
✓162	Amending 27-1-703 to provide for contribution from joint tortfeasors.	2/5/81	Mazurek	3/6/81	Do Not Pass 3/10/81	3/10/81
		3/11/81			Do Pass as Amnd. 3/17/81	3/17/81
164	Providing for the payment of delinquent child support by deduction from the obligor's income.	2/16/81	S. Brown	3/9/81	Do Pass 3/12/81	3/12/81
173	Amending 71-3-403 to remove the specific fee for filing farm laborers' liens.	2/5/81	Towe	3/9/81	Do Pass 3/10/81	3/10/81
174	Subjecting insurance companies to misdemeanor penalties for noncompliance with disposal of motor vehicle laws.	2/10/81	Hager	3/9/81	Do Not Pass 3/9/81	3/9/81
216	Deleting the supreme and district court 90-day rule regarding payment of judges.	2/17/81	S. Brown	3/11/81	Do Pass as Amended 3/13/81	3/13/81
222	Amending 25-10-711 to provide new standards for awarding costs to a party prevailing against the state.	2/14/81	Kolstad	3/11/81	Do Pass as Amended 3/17/81	3/17/81

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 6, 1981

The meeting of the House Judiciary Committee was called to order by Chairman Kerry Keyser at 8:00 a.m. in Room 437 of the Capitol. All members were present except Rep. Iverson, Rep. Matsko, and Rep. Huennekens, who were excused. Jim Lear, Legislative Council, was present.

SENATE BILL 119 SENATOR OCHSNER, chief sponsor, stated this bill is to revise the duties of district court clerks.

DAN BUKVICH, Clerk of District Court, was in favor of the bill. EXHIBIT 1.

There were no further proponents.

There were no opponents.

The Senator closed the bill.

REP. KEYSER asked if the sections that were being repealed with this bill were covered in other areas of law. BUKVICH replied yes.

SENATE BILL 120 SENATOR OCHSNER, chief sponsor, stated this bill is to revise the law relating to juries. It raises the pay of the jurors that are selected. It also designates the clerk of the court as jury commissioner.

CLARA GILREATH, Clerk of District Court, supports the bill. It updates the administrative procedure. It allows the clerk to be appointed jury commissioner. Current law requires the judge to select jurors one by one through a drawing of capsules. In the smaller counties where a judge is only available once a month the clerks are taking over this responsibility presently. This bill will make their actions legal.

LORRAINE VAN AUSTOL, Clerk of the Court in Bozeman, stated this bill is to help make it easier for calling of the jury. The judges in her county support the bill. A juror who is called and does not serve will receive an appearance fee of $12.00. Those who are selected for the jury will receive $25.00 per day. EXHIBIT 2.

There were no further proponents.

There were no opponents.

SENATOR OCHSNER closed the bill.

REP. KEEDY asked about excused jurors. GILREATH replied many jurors come in and do not sit at the questioning. Before the court session begins they ask for an excuse to leave. It happens more than what some people realize. REP. EUDAILY asked who approves

LARRY HUSS, Montana Savings & Loan League, was in full support.

There were no further proponents.

There were no opponents.

REP. EUDAILY asked why savings accounts were included in the bill. SENATOR VAN VALKENBURG replied certain privileges go with a savings account. Cards are issued for cash machines. When the bill was first introduced savings accounts were not included, however, it was felt it would be beneficial to include it. HUSS agrees that it was appropriate to include savings accounts.

REP. TEAGUE asked if a false statement of money available would be included. It was replied that would be under insufficient funds and would not be prosecuted under this bill.

REP. KEEDY asked what type of false statement is the bill referring to. HUSS replied if the person's intention was to open an account to use it to defraud merchants.

REP. DAILY asked what responsibility the bank has. HUSS replied it does not bear a financial responsibility. REP. DAILY stated when a customer deposits money in a bank and the bank gives him checks for use, they should be responsible.

REP. CONN asked if the fine would be designated on the signature card. No was the answer.

REP. KEEDY felt that next session all types of salesmen, etc. would want to be protected under a similar bill. The Senator replied that is a problem with every bill. The line has to be drawn somewhere.

SENATE BILL 162 SENATOR MAZUREK, sponsor, stated this bill is to amend 27-1-703 to provide for contribution from joint tortfeasors. EXHIBIT 3, an amendment to the bill, was given to the committee.

In 1977 the legislature passed a statute which provides for contributory to joint tortfeasors. It would be possible to recover from both parties. It applies only if the plaintiff is not negligent. Being a passenger in the car would not be negligent. You cannot join other defendants. In allowing a plaintiff to select a defendant if more than one is at fault, all should be in the same suit.

PAUL KELLER, American Insurance Association, supports the bill. KELLER described a case involving a car wreck that had multiple suits filed. This bill would prevent that. It would help the courts clear up the calendar as it would place it all in one suit.

There were no further proponents.

MIKE MELOY, Montana Trial Lawyers Association, opposed the bill. This bill makes it clear that negligence applies whether guilty or not. MELOY did not like lines 21-25 on page 1 of the bill. The plaintiff should be able to chose who he wants to sue. Trial lawyers are likely to sue the person most likely to prevail on a particular case. That permits the defendant to bring in many people.

There were no further proponents.

In closing, SENATOR MAZUREK stated it is the courts job to decide who is responsible. Anyone of the defendants should be able to sue by one lawsuit. It is a function of the court.

REP. HANNAH asked what the supreme court's opinion was. SENATOR MAZUREK replied the supreme court examined the legislative history. They suggest this is a matter for the legislature to work out.

REP. EUDAILY asked about 19a in the bill. Should it be 19b? SENATOR MAZUREK replied it should be 19b but it might be more appropriate to leave it just as 19 to accomplish the intent of the bill.

There was no further discussion on the bill.

SENATE BILL 14 SENATOR TOWE, chief sponsor, stated this bill's purpose is to amend 46-18-201 providing for fines and assessment of costs in felony criminal cases. There are certain white collar crimes, where for a variety of reasons, incarceration is not a likely solution, yet nothing else is available. It is to add to punishments. It also provides that the individual can be required to pay the court costs.

Section 1 provides in felony cases where penalties of imprisonment may be imposed. Crimes against the body are in addition to that. It does not make sense to fine the criminal. If he is not able to pay the fine he must take into account the nature of the burden.

Section 4 limits the amount to $50,000. In addition to the fine or in lieu of the fine, he may be required to pay court costs, transportation costs, witness fees, etc., depending on if he can pay the costs. The only way to revoke this is if he fails to make a good faith effort to pay. Installment payments are available.

This bill puts money into the general county fund. Section 6 of the bill makes it govern to existing law.

TOM HONZEL, County Attorneys, supports the bill. There were a number of felony cases that did provide for fines. In aggravated assualt

Exhibit 3

AMENDMENT TO SB 162

Page 2, line 6.
Following: "Shall"
Strike: remainder of lines 6, 7 and 8
Insert: "Make any party indispensable pursuant to Rule 19(b), M. R. Civ. P."

SENATOR MAZUREK

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

SENATE BILL 162 Date 3/6/81

SPONSOR Mazurek

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
MELOY	HELENA	MTLA		X
[illegible]	[illegible]	[illegible]	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-33

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 10, 1981

The executive session of the House Judiciary Committee was called to order at 9:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present except Rep. Huennekens, who was excused and Rep. Bennett, who was absent. Jim Lear, Legislative Council, was present.

SENATE BILL 14 REP. DAILY moved do not pass.

REP. DAILY felt this would punish the poor and benefit the rich.

REP. CONN made a substitute motion of do pass. This may provide some punishment for people who commit white collar crimes.

REP. DAILY responded the rich people know the judges, therefore, the rich people will receive the fine and the poor people will go to jail.

REP. YARDLEY supported the substitute motion. County attorneys have been supporting this type of legislation for years. This gives a more realistic measure to go by.

REP. HANNAH stated the committee has been saying the judges are too subjective. This bill is a step in the wrong direction. We are condoning a system nobody likes. Page 3 of the bill, lines 1-8 indicate if he loses his job there is no penalty. REP. HANNAH felt this was a questionable bill.

REP. CONN stated it would be punitive to punish the entire family when it was the father who committed the action.

REP. KEYSER stated he felt the installment payment plan of the bill was a problem, however, the person could be brought back in for missing a payment, which might be a deterrent.

The motion of do pass resulted in a roll call vote. Those voting yes were: KEYSER, CONN, EUDAILY, IVERSON, MATSKO, ANDERSON, ABRAMS, KEEDY, YARDLEY, TEAGUE and BROWN. Those voting no were: SEIFERT, HANNAH, MCLANE, DAILY, and SHELDEN. The motion carried 11 to 5.

SENATE BILL 120 REP. DAILY moved do pass.

REP. BROWN moved to strike sections 2, 3, and 8 from the bill. The motion carried unanimously.

REP. DAILY moved do pass as amended. The motion carried unanimously.

SENATE BILL 159 REP. KEEDY moved to strike the new section, page 4, lines 15-24 and to renumber subsequent sections. The motion carried.

The amendments from the last executive session for this bill were read to the committee.

REP. CURTISS moved do pass as amended.

REP. EUDAILY made a motion to strike on page 5, lines 3 after "damaging" and to renumber the following sections. The amendment carried.

The motion of do pass as amended carried with REP. SEIFERT voting against the motion.

SENATE BILL 162 REP. SEIFERT moved do not pass.

REP. EUDAILY moved to adopt the amendment as provided by the sponsor and to strike (b) of 19(b). REP. EUDAILY withdrew his motion.

REP. KEEDY felt that section 1 of the bill was worth saving. REP. HANNAH asked how will that help clear up the courts and what kinds of problems will occur if we don't clear it up? REP. KEEDY was not sure. REP. HANNAH stated the sponsor felt the legal community thought this was clear but the courts disagree.

A roll call vote on the motion of do not pass resulted. Those voting yes were: KEYSER, SEIFERT, CONN, CURTISS, EUDAILY, HANNAH, IVERSON, MCLANE, and ABRAMS. Those voting no were: ANDERSON, DAILY, SHELDEN, TEAGUE, YARDLEY and BROWN. The motion carried 9 to 6.

SENATE BILL 170 REP. CURTISS moved do pass. She felt this would reduce the fee. Surveyors can survey over and over again and it is useless.

The motion of do pass carried with DAILY, EUDAILY, KEYSER and CONN voting no.

SENATE BILL 171 REP. BROWN moved do pass. The motion carried unanimously.

SENATE BILL 173 REP. SEIFERT moved do pass. The motion carried unanimously.

The meeting adjourned at 10:20 a.m.

Kerry Keyser Chairman

KERRY KEYSER, CHAIRMAN

mr

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 17, 1981

The executive session of the House Judiciary Committee was called to order at 9:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present except Rep. Hannah, Rep. Daily, and Rep. Huennekens, who were absent. Jim Lear, Legislative Council, was present.

SENATE BILL 245 REP. BENNETT moved do pass.

REP. BENNETT moved to repeal section 10 from the law. He felt the law was archaic and makes no sense. It is none of the state's business to know who had an abortion.

REP. CURTISS opposed the motion and felt the section should be left as is. Page 10, lines 16-17 states that violation of the section is a misdemeanor. REP. HANNAH agreed.

REP. MATSKO stated section 6, making it a misdemeanor, makes it objective and it is contrary to repeal section 10. REP. BENNETT responded that leaving it in the law would be contrary to current practice since abortions can be obtained legally. REP. YARDLEY stated there must be some relationship to this and the abortion statute itself.

REP. BENNETT wondered about the possibility instead of repealing the section to leave in the language from lines 17-23 and replace the "," with a "." after "realize". On page 10, line 8, after "abortion" striking the rest of line 23 to line 10 on page 8. This would require the reporting of the abortions yet it would be confidential information. REP. HANNAH stated HJR15 was in the same lines as this amendment. Both the House and the Senate showed by passage of HJR15 stricter controls are necessary. This is existing law and it is consistent. REP. HANNAH opposed the motion. The sponsor of the billmade no attempt to take this section out of the law. It would be a radical change.

The motion to repeal section 10 in its entirety failed with BENNETT, KEEDY, ABRAMS, and SEIFERT voting for the motion. REP. CONN abstained.

REP. HANNAH felt that page 8, lines 9-10 was a radical change from current practice. When a person reaches legal age he could find out who is parents are. Page 8 stops that ability and puts it in the hands of the court to decide. REP. HANNAH objected to that.

REP. YARDLEY stated section 3 requires a court order now. The sponsor intended to go the other direction with the bill and ended up going this way.

The motion of do pass carried with MCLANE, ABRAMS, ANDERSON and HANNAH voting no. REP. YARDLEY was assigned to carry the bill.

SENATE BILL 162 REP. KEEDY moved do pass.

REP. KEEDY explained a tortfeasor is one who commits a civil wrong; damage is done against another party.

A consolidation should be allowed. In some cases it is important to have a clear and fair determination. REP. KEEDY told of a supreme court decision concerning a car accident. The plaintiff filed suit not against the person who hit them but against her own insurance company, which also insured the driver of the car in which she was riding, in an attempt to collect the insurance. The insurance company tried to bring in the third party, the driver of the other car. The supreme court felt they should all get together. This would allow that to happen so it can all be done in one lawsuit.

REP. EUDAILY moved on page 2, line 6 following "which" to strike lines 6, 7, and 8 and to insert "make any party indispensable pursuant to Rule 19, M.R.Civ.P.". The motion carried unanimously.

REP. KEEDY moved do pass as amended.

REP. KEEDY moved to strike "proportion" and to insert "apportion" on page 2, line 3 of the bill following "shall". The motion carried.

The motion of do pass as amended carried with EUDAILY voting no.

REP. KEEDY was assigned to carry the bill.

The meeting adjourned at 10:45 a.m.

KERRY KEYSER, CHAIRMAN

mr

TED SCHWINDEN
GOVERNOR

State of Montana
Office of the Governor
Helena 59620

April 15, 1981

The Honorable Jean A. Turnage
President of the Senate
State Capitol
Helena, Montana 59620

The Honorable Robert L. Marks
Speaker of the House
State Capitol
Helena, Montana 59620

Dear Senator Turnage and Representative Marks:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return Senate Bill No. 162, "AN ACT TO PROVIDE FOR CONTRIBUTION FROM JOINT TORTFEASORS; AMENDING SECTION 27-1-703, MCA," without my signature and recommend the attached amendments for the following reasons.

Senate Bill No. 162, as passed, reforms Montana common law pertaining to apportionment of contribution among joint tortfeasors which has formed the basis of professional judgments already exercised by attorneys on cases now in process. Since SB 162 could be construed as a change in procedure rather than substantive law, it is possible that the courts could apply the apportionment principals to cases that are presently filed but that have not been brought to trial before July 1, 1981.

The amendment that I am proposing will allow SB 162 to operate on all causes of action that accrue to Plaintiffs after July 1, while also allowing cases presently in process to remain unaffected.

In addition, I am also proposing an amendment to the title of SB 162 so that it will more accurately reflect the contents of the bill.

I urge your concurrence in these amendments.

Sincerely,

Ted Schwinden

TED SCHWINDEN
Governor

April 15, 1981

PROPOSED GOVERNOR'S AMENDMENTS TO SENATE BILL NO. 162;
REFERENCE COPY, AS FOLLOWS:

1. Page 1, Line 5
Following: "TORTFEASORS"
Insert: "AND PROVIDING FOR JOINDER OF PARTIES"

2. Page 2, Line 16
Following: Line 15
Insert: "APPLICABILITY". This act shall apply only to causes of action arising after the effective date of this act."

SENATE BILL NO. 162

INTRODUCED BY MAZUREK

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR CONTRIBUTION FROM JOINT TORTFEASORS AND PROVIDING FOR JOINDER OF PARTIES; AMENDING SECTION 27-1-703, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-1-703, MCA, is amended to read:

"27-1-703. Multiple defendants jointly and severally liable -- right of contribution. (1) Whenever the ~~comparative~~ negligence of ~~the--parties~~ any party in any action is an issue ~~and-recovery-is-allowed-against-more-than one-party,~~ each ~~such~~ party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other ~~party-against-whom-recovery-is allowed~~ person whose negligence ~~is--claimed--to~~ MAY have contributed as a proximate cause to the injury complained of.

(2) On motion of any party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence ~~is claimed--to~~ MAY have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. WHENEVER MORE THAN ONE PERSON IS FOUND TO HAVE CONTRIBUTED AS A PROXIMATE CAUSE TO THE INJURY COMPLAINED OF, THE TRIER OF FACT SHALL ~~PROPORTION~~ APPORTION THE DEGREE OF FAULT AMONG SUCH PERSONS. Contribution shall be proportional to the negligence of the parties against whom recovery is allowed. NOTHING CONTAINED IN THIS SECTION SHALL ~~REQUIRE--THE--JOINDER-OF-ANY-PARTY-PURSUANT-TO-RULE-19(A)-OF THE-MONTANA-RULES-OF-CIVIL-PROCEDURE-OR-OTHERWISE.~~ MAKE ANY PARTY INDISPENSABLE PURSUANT TO RULE 19, M.R.CIV.P.

~~(2)~~(3) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties against whom recovery is allowed is liable to contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party."

SECTION 2. APPLICABILITY. THIS ACT SHALL APPLY ONLY TO CAUSES OF ACTION ARISING AFTER THE EFFECTIVE DATE OF THIS ACT.

-End-

REFERENCE BILL: INCLUDES GOVERNOR'S AMENDMENTS DATED 4-15-81

SB 0162/05

30